



California Fair Political Practices Commission

December 29, 1986

Kathleen Nimr
Contra Costa County
Planning Commissioner
2204 Olympic Drive
Martinez, CA 94553

Re: Your Request for Advice
Our File No. I-86-320

Dear Ms. Nimr:

You have requested advice concerning the conflict of interest provisions of the Political Reform Act.^{1/} Your letter states only general questions; it does not seek advice concerning a specific pending decision. Therefore, we will provide only general advice in this letter and consider your request to be a request for informal assistance pursuant to Regulation 18329(c) (copy enclosed).^{2/}

QUESTIONS

Does Section 84308 prohibit an appointed planning commissioner from engaging in, or require disqualification of an appointed planning commissioner who engages in, the following activities:

1. Organizing a fundraiser for a candidate without soliciting donations on a one-to-one basis.
2. Serving on a campaign committee for a candidate who receives contributions from an individual who subsequently appears before the planning commission.

^{1/} Government Code Section 81000-91015. All statutory references are to the Government Code unless otherwise noted. Commission regulations appear at 2 California Administrative Code Section 18000, et seq. All references to regulations are to Title 2, Division 6 of the California Administrative Code.

^{2/} Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Section 83114; Regulation 18329(c)(3).)

3. Serving on a committee supporting a ballot measure and raising funds for the measure.

4. Serving on a committee which determines which candidates receive funds raised by a political action committee.

CONCLUSION

1. A planning commissioner may organize a fundraiser for a candidate unless contributions of \$250 or more will be solicited from a party or participant to a pending use entitlement proceeding.

2. In general, a planning commissioner may participate in decisions involving a party or participant who has contributed prior to the party's or participant's appearance before the commission to a candidate on whose campaign committee the commissioner serves.

3. A planning commissioner may not solicit contributions of \$250 or more for a ballot measure from a party or participant to a pending proceeding involving an entitlement for use.

4. Your fourth question is hypothetical and too vague to make informal assistance appropriate. Therefore, we decline to provide advice pursuant to Regulation 18329(c)(4)(D) and (F).

ANALYSIS

Section 84308 imposes certain campaign contribution limits and related disqualification requirements on members of appointed boards and commissions. The statute imposes three duties on members of these boards and commissions:

1. These officials may not accept, solicit or direct campaign contributions of \$250 or more from parties, participants or their agents in any proceeding involving a license, permit, or other use entitlement during the time the proceeding is pending and for three months after final decision.

2. These officials must disqualify themselves from participating in use entitlement proceedings if they have received campaign contributions of \$250 or more from a party or participant within the 12 months prior to the decision.

3. These officials must disclose, on the record, all campaign contributions totaling \$250 or more received from parties or participants within 12 months prior to the decision.

Your questions, except the second one, appear to relate to the prohibition on accepting, soliciting or directing contributions of \$250 or more from any party, participant, or agent of a party or participant, while a proceeding involving a license, permit, or other use entitlement is pending before the official's agency.^{3/} Section 84308(b) specifies that this prohibition applies whether the official accepts, solicits or directs the contribution for himself or on behalf of any other official, any candidate for office, or any committee.

Organizing a fundraiser

The answer to your first question depends on whether a planning commissioner is considered to be "soliciting," "accepting" or "directing" a contribution when he or she organizes a fundraiser for a candidate without soliciting donations on a one-to-one basis.

In Regulation 18438.6, the Commission has defined the terms "solicit," "accept" and "direct" for purposes of Section 84308. Regulation 18438.6 provides:

(a) A person "accepts" or "receives" a contribution only if the contribution is for that person's own candidacy or own controlled committee.

(b) A person "makes a contribution" to an officer or candidate only if the contribution is made for that officer's or candidate's own candidacy or controlled committee.

(c) An officer "solicits" a contribution only if he or she knows or has reason to know that the person being solicited for a contribution is a party or agent of a party, or is a participant or agent of a participant and either:

^{3/} As noted above, this prohibition applies for three months after final decision in the proceeding.

(1) The officer or candidate personally requests a contribution for his or her own campaign or controlled committee, or for any other candidate, public official or committee, either orally or in writing; or

(2) The agent of the officer or candidate with the officer or candidate's knowledge, requests a contribution for the officer or candidate's own campaign or controlled committee.

(d) Notwithstanding subsection (c), a solicitation does not include a request made in a mass mailing sent to members of the public, to a public gathering, or published in a newspaper, on radio or TV, or in any other mass media. A person does not "solicit" solely because his or her name is printed with other names on stationery or a letterhead used to request contributions.

(e) A person "directs" a contribution if he or she acts as the agent of another person or of a committee other than his or her own controlled committee in accepting a contribution on behalf of, or transmitting a contribution to, such other person or committee.

Your question concerns the actions of an official with regard to contributions for another candidate. Therefore, we must focus on the definitions of "soliciting" and "directing" contributions. The official's actions would not be "accepting" or "receiving" contributions because the contributions raised are for another person's candidacy. (Regulation 18438.6(a).)

We have previously advised that the mere listing of an official's name with other "friends" in a fundraising invitation is not solicitation prohibited by Section 84308, even if a contribution of \$250 is requested and the invitation is sent to parties or participants in proceedings pending before the official's agency; however, the official must not personally request campaign contributions of \$250 or more from the parties or participants. (Regulation 18438.6(c); Harron Advice Letter (No. A-86-189, July 8, 1986), copies enclosed.) We have also advised that inclusion of the official in a list of "friends" of a candidate does not, of itself, make the official an agent of the candidate; therefore, the official would not be "directing" contributions. (Regulation 18438.6(e); Harron Advice Letter, supra.)

We reach a different conclusion when the official's name is listed with other "friends" in a fundraising invitation and the fundraising event occurs at the official's home. When an official permits another candidate or committee to use his or her home for a fundraising event, the official essentially hosts the event. In so doing, the official acts as the agent of that other candidate or committee in soliciting or directing a contribution on behalf of the other candidate or committee. (Harron II Advice Letter (No. A-86-189, August 29, 1986), copy enclosed.) Our conclusion is the same whether or not the official attends the event: The official is "soliciting" or "directing" a contribution within the meaning of Section 84308. (Id.; Regulation 18438.6(c) and (e).) The exception in Regulation 18438.6(d), which provides that an official does not "solicit" a contribution solely because his or her name is printed with other names on stationery used to request contributions, would not apply. The official has a much more direct and obvious involvement in the fundraising process than if the official merely permits his or her name to appear on a letter as one of a group of people supporting the candidate. (Harron II, supra at p.4.)

We reach a similar result regarding your first question. A planning commissioner who actually organizes a fundraiser for a candidate has the same kind of "direct and obvious involvement" in contribution solicitation as the official who offers his or her home for the fundraiser. (Harron II, supra at p.4.) The exception for inclusion of the official's name with other names in a letter requesting contributions obviously would not be applicable to actual efforts to organize the fundraiser. If an agent of the planning commissioner, with the commissioner's knowledge, requests a contribution of \$250 or more from a person the commissioner knows or has reason to know is a party, a participant, or an agent of a party or participant, prohibited solicitation has occurred. This is true even if the commissioner does not personally engage in one-to-one solicitation. (Regulation 18438.6(c).)

In summary, a planning commissioner is free to engage in fundraising activities if contributions of less than \$250 are solicited or if contributions are not solicited from parties or participants to pending use entitlement proceedings. It is only when contributions of \$250 or more are solicited from parties or participants that Section 84308 applies. If an agent of the commissioner solicits \$250 or more from parties or participants, a violation of Section 84308 would occur even if the commissioner did not personally request that the contribution be made.

Serving on a campaign committee

Your second question appears to relate to subdivision (c) of Section 84308, which requires officials covered by Section 84308 to disqualify themselves if they have "received" certain types of campaign contributions. You have asked whether a planning commissioner who serves on a campaign committee for a candidate who receives contributions from an individual who subsequently appears before the commission would have a conflict of interest under Section 84308. Under Regulation 18438.6, a candidate "receives" a contribution only if the contribution is for his or her own candidacy or controlled committee. The commissioner has not "received" a contribution under the facts you present as long as the commissioner is not a candidate. (Regulation 18438.6(a).) Therefore, the duty to disclose certain contributions received and to disqualify himself or herself from participation would not apply. (Section 84308(b).)^{4/}

Serving on and raising funds for a ballot measure committee

Section 84308 covers contributions to candidates and committees in federal, state and local elections. (Section 84308(a)(6).) It does not distinguish between committees supporting candidates and those supporting ballot measures.

A planning commissioner who serves on a committee supporting a ballot measure and who raises, solicits, or directs funds for the measure could violate Section 84308(b) under certain circumstances. If a commissioner solicits contributions of two hundred fifty dollars (\$250) or more from a person whom the commissioner knows or has reason to know is a party, a participant or an agent of a party or participant, while a use entitlement proceeding is pending, the commissioner

^{4/} This analysis assumes that the commissioner did not accept, solicit or direct contributions while proceedings were pending or within 12 months prior to the decision. You have indicated that the appearance by the party or participant is to take place subsequent to the contribution to the committee. Additional analysis under Section 84308(b) would be required if facts differ.

Kathleen Nimr
December 29, 1986
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would be violating Section 84308(b).^{5/} The violation would occur if the request for funds was made directly or through an agent of the commissioner. (Section 84308(b); Regulation 18438.6(c).)

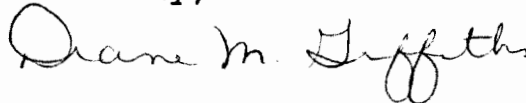
Serving on a committee which allocates funds to candidates

You have asked whether a planning commissioner who serves on a committee which determines which candidates receive funds raised by a political action committee would have a conflict of interest under Section 84308. This question is too vague and hypothetical to make informal assistance appropriate. (Regulation 18329(c)(4)(D) and (F).) If you need further assistance on this issue, please contact me to discuss the particular facts of a specific decision you face, and I will be happy to provide more advice.

Let me stress in closing that this letter is intended to provide you with general guidance on the issues you have raised. Our advice could change significantly with what may appear to be minor variations in facts. We try to avoid declining to provide assistance to the maximum extent feasible in order to offer officials as much guidance as we can. However, we advise you to contact us with the specific facts of a particular pending decision prior to participation.

If you have any questions, I may be reached at (916) 322-5901.

Sincerely,



Diane M. Griffiths
General Counsel

DMG:km
Enclosure

^{5/} A violation would occur if the solicitation took place while the proceeding was pending or any time within three months following decision. (Section 84308(b).)

2204 Olympic Drive
Martinez, Ca. 94553
November 12, 1986

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Fair Political Practices Commission
428 J Street
Sacramento, Ca. 95816

Re: Advice relating to provisions of the Levine Bill

Dear Sir:

In a previous advice letter, you brought up the matter of conflict of interest for a non elected person who may participate in soliciting donations for an elected candidate.

I understand that placing one's name on an invitation to a fundraiser is not considered soliciting donations, but that most active participation may be.

Would you advise what activities may be considered a conflict of interest for a Planning Commissioner.?

For example, would the following activities be considered a conflict of interest?

Serving on an election committee for a candidate who receives donations from someone who subsequently came before the Planning Commission

Organizing a fundraiser for a candidate, but not necessarily soliciting donations on a one-to-one basis

Serving on a committee for a ballot proposition and raising money for the issue

Serving on a PAC that raises money for candidates and serving on the committee that decides which candidates receive the money?

I would appreciate any other information you may have on this subject.

Sincerely,



Kathleen Nimr



California Fair Political Practices Commission

November 20, 1986

Kathleen Nimr
2204 Olympic Drive
Martinez, CA 94553

Re: 86-320

Dear Ms. Nimr:

Your letter requesting advice under the Political Reform Act was received on November 17, 1986 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact Kathryn E. Donovan, an attorney in the Legal Division, directly at (916) 322-5901.

We try to answer all advice requests promptly. Therefore, unless your request poses particularly complex legal questions, or more information is needed, you should expect a response within 21 working days. You also should be aware that your letter and our response are public records which may be disclosed to the public upon receipt of a proper request for disclosure.

Very truly yours,

Diane M. Griffiths
General Counsel

DMG:plh